

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2504 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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MARWADI HIRABHAI A/S.RAJUBHAI KANJIBHAI

Versus

STATE OF GUJARAT

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Appearance:

MRS MADHUBEN SHARMA for Petitioner

MR. PATEL, AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 19/11/1999

ORAL JUDGEMENT

1. The petitioner came to be detained by virtue of order passed by the Commissioner of Police, Vadodara, dated 8th February 1999, in exercise of powers u/s 3 sub-section [2] of the Gujarat Prevention of Anti Social Activities Act, 1985 [for short, 'the PASA Act']. The grounds for detention indicate that the detaining authority took into consideration the fact that four offences under Bombay Prohibition Act were registered

against the petitioner. The detaining authority also took into consideration the statements of three witnesses who had witnessed the bootlegging activities of the petitioner and were victim of threat and intimidation used by the petitioner for pursuing his antisocial activities. The detaining authority verified the statements of two witnesses and recorded a subjective satisfaction in respect of three witnesses for exercise of powers of claiming privilege u/s 9[2] of the PASA Act and thereafter, came to the conclusion that the detention was the only remedy for preventing the petitioner from pursuing his illegal and antisocial activities.

2. The petitioner challenges the detention by this petition preferred under Article 226 of the Constitution of India, mainly on the ground that the statement of third witness has not been verified by the detaining authority and still a subjective satisfaction has been recorded by the detaining authority in respect of that witness also for exercising powers u/s 9[2] of the PASA Act. The order of detention is, therefore, bad in law and may be quashed.

3. Ms. Bhatt, learned Advocate for petitioner, has restricted her argument only to this ground. She submitted that the subjective satisfaction in respect of third witness in exercise of powers u/s 9[2] of claiming privilege has been wrongly and mechanically exercised and therefore, order of detention would be vitiated. The petition may therefore be allowed and the order in question may be quashed and set aside.

4. Mr. Patel, learned AGP opposing this petition on behalf of respondents, submitted that the detaining authority in affidavit has explained this situation in para 9 by stating that the detaining authority arrived at a subjective satisfaction after carefully scrutinizing, examining and considering the material placed on record and after personally verifying the genuineness, correctness and veracity of the incidents narrated in the statements of witnesses and therefore, the petition may be dismissed.

5. There is no dispute about the fact that the statement of third witness has not been verified by the detaining authority. This fact is revealed even from the grounds of detention where in para 3, it is recorded by the detaining authority that he has verified the statements of the witnesses and has interrogated two witnesses. There is no mention about the verification by the detaining authority of the third witness. In the

affidavit, the detaining authority speaks of having verified the statements of the witnesses about the genuineness, correctness and veracity of the allegations made in the statements of the witnesses. Mr. Patel, learned AGP could not explain how the authority can be said to have been subjectively satisfied about the genuineness and correctness of the statement of the third witness when he is not interrogated or the statement is not verified by the detaining authority. This Court is also at loss to grasp how the detaining authority can be said to be subjectively satisfied in respect of third witness whose statement is not verified. It is therefore clear that the privilege u/s 9[2] of the Act claimed in respect of the third witness by the detaining authority, is not based on a subjective satisfaction as the statement of the said witness has not been verified, nor the witness has been interrogated by the detaining authority. The subjective satisfaction therefore would be vitiated so far as the privilege claimed u/s 9[2] by the detaining authority in respect of the third witness is not founded on any concrete material. This has resulted in adversely affecting the constitutionally guaranteed right of the petitioner of making an effective representation. In this view of the matter, the order of detention also as a necessary consequence would stand vitiated and deserves to be quashed and set aside. The petition, in turn, also needs to be allowed.

6. The petition is therefore allowed. The impugned order of detention passed by the Commissioner of Police, Vadodara city, on 8th of February 1999 in respect of the petitioner Marwadi Hirabhai @ Rajubhai Kanjibhai is hereby quashed and set aside with no orders as to costs. The petitioner be set at liberty forthwith, if not required to be detained in custody for any other case. Rule is made absolute accordingly.

[ A.L.DAVE, J. ]

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